

UNAPPROVED MINUTES
COUNCIL MEETING
August 23, 2010

A regular meeting of the Council of the City of Salem, Virginia, was held in Council Chambers, City Hall, 114 North Broad Street, on August 11, 2010, at 7:30 p.m., there being present the following members of said Council, to wit: Byron Randolph Foley, Jane W. Johnson, William D. Jones, and Lisa D. Garst (John C. Givens – absent); with Byron Randolph Foley, Mayor, presiding; together with Kevin S. Boggess, City Manager; James E. Taliaferro, Assistant City Manager and Clerk of Council; Frank P. Turk, Director of Finance; Melinda J. Payne, Director of Planning and Economic Development; Mike Stevens, Communications Director; and Stephen M. Yost, City Attorney, and the following business was transacted:

The August 11, 2010, work session and regular meeting minutes were approved as written.

The report by the City Manager of the City's activities for July 2010 was received and ordered filed.

Mayor Foley reported that this date and time had been set to hold a public hearing and to consider an ordinance on first reading rezoning the property of L. Richard Jr. and Debra S. Padgett, property owners, located at 521 Boulevard-Roanoke (Tax Map #146-6-10) from RMF Residential Multi-Family District to RB Residential Business District; the RB rezoning request also includes the following properties: Sprinkle & Sprinkle, 501 Boulevard-Roanoke (Tax Map #146-6-12), Sprinkle & Ayyildiz, 511 Boulevard-Roanoke (Tax Map #146-6-11), Sprinkle & Ayyildiz, 500 block Boulevard-Roanoke (Tax Map #146-6-10.1), and Cynthia D. Jennings, 529 Boulevard-Roanoke (Tax Map #146-6-9); notice of public hearing was advertised in the August 4 and 11, 2010, issues of The Roanoke Times, a newspaper having general circulation in the City of Salem; and

<u>ITEM 1</u> ORDINANCE PASSED ON FIRST READING REZONING THE PROPERTIES LOCATED AT 521, 501, 511, 500 BLOCK, AND 519 BOULEVARD- ROANOKE TO RB

WHEREAS, the Planning Commission at its regular meeting held August 11, 2010, recommended approval; and

WHEREAS, staff noted the following: the subject properties consist of five parcels, located on the north side of Boulevard-Roanoke; the properties are mostly former residential lots, ranging from .14 acres to .43 acres; the non-vacant properties are currently occupied by several single family homes and an office building; this request is to rezone these properties to allow a law practice (521), as well as bring the zoning of the office building (511) into compliance with the land use; prior to the current zoning ordinance, these properties were

zoned R-2 and R-4, some of which allowed professional and medical offices; the office building was constructed in 1970; when the new zoning ordinance went into effect in 2003, the properties were changed to their current RSF and RMF zoning; in order to improve on future land use throughout Salem, staff requested the applicants seek support from their adjacent neighbors to include their properties in the request; if approved, these five properties would become Residential Business District providing a higher land use as outlined in the comprehensive plan; in accordance with Section 106-400, applicants may be required to submit a site plan to the city for review prior to receiving a certificate of occupancy; in addition, applicants may also be required to pave any unpaved parking areas, install landscaping, and potentially install storm water management on the site; and

WHEREAS, L. Richard Padgett, Jr., and Debra S. Padgett, property owners, appeared before the Council in support of the rezoning request; Mr. Padgett stated that in July 1980 he and his wife moved into the house located at 521 Boulevard with the idea of making it their home as well as an office for his law practice; he stated that he, his wife, and small child lived in the upstairs of the residence and his office was in the downstairs of the residence; he further stated that the house was in disrepair when they moved into the residence and they were able to renovate the house and raised their two children in the residence; he stated that in 1985 he purchased property located at 300 Second Street and moved his law practice into the building located on the property in order to have more space for his law practice as well as additional space in his residence; he further stated that from 1985 until July of this year, he and his wife lived in the residence at 521 Boulevard and operated his office at 300 Second Street; he stated that he and his wife are in the process of trying to downsize both their home and his business; he stated that his residence was zoned so that an office could be operated out of the residence until 2005; and the zoning was changed in 2005; therefore, he is no longer able to operate an office from the residence; he stated that he and his wife have purchased a patio home and would like to move his business back to their former residence located at 521 Boulevard; he further stated that he would like for his office to be located in the lower level of the residence and use the upper level for living space, storage, and for the benefit of their children in later years; he further stated that he did not know that the zoning of the property had been changed in 2005 until he contacted the city about his desire to move his office back to 521 Boulevard; he stated that a vacant lot separates his property and the property of G. Sprinkle, a dentist's office, which is also zoned residential; he went on to describe the other properties involved in the petition and surrounding properties; he stated that when he and his wife purchased the property, they were aware of the business activity surrounding the property and were able to adjust to the businesses; he

further stated that in the current housing market, he believes that his property, if marketed and sold as a single-family residence, could be sold at its true market value; he believes that the property would need to be marketed as rental property or as a professional office building in order to sell at its true market value; he further stated that he feels that the highest and best use of the property is for it to be used as a professional office building, which is his intended purpose; he stated that he does not plan to sell the property at 521 Boulevard, he plans to move his office to the property and sell the property located at 300 Second Street, which is already zoned RB; it will be marketed as a professional office building; he stated that RB is the best zoning for the properties included in the rezoning request; he further stated that the homes around the properties are being “invaded” by Roanoke College students and he feels if the properties were rezoned to RB it would help reduce the influx of college students into the neighborhood; Mr. Padgett showed Council some photographs of the properties involved in the request and surrounding properties; he stated that he feels as though the Boulevard is ideally setup for a mixture of residential and the types of businesses currently located on the Boulevard; he read the “Statement of Intent” from Section 106-208.1 of the Code of the City of Salem, Virginia; he asked Council to approve the rezoning request; and

WHEREAS, Frank Munley, 425 Boulevard-Roanoke, appeared before the Council and stated that he has lived at the residence for 24 years; he stated that the area at which he lives on Boulevard is beautiful; he stated that the neighborhood is not uniformly residential, but he feels that it has an acceptable mix of residential and commercial uses consistent with the Statement of Intent of the Residential Business zoning; he listed the different businesses located near his residence; he further stated that to date the mix of residential with businesses has not disrupted the stability of the neighborhood and he would like for it to remain undisrupted; he stated that rezoning the property located at 511 Boulevard to RB is a necessity as it is currently a medical office and is inappropriately zoned RSF; he stated that he does not oppose the properties located at 511 Boulevard and 521 Boulevard being rezoned, but he does object to the RB zoning category being used to do it; he further stated that he feels that Mr. Padgett is requesting the property to be rezoned to RB to “lift a very heavy load” by implying that it is going to “clean up the neighborhood”; he stated that the information he received from the Planning Department is that any property can be used as rental property; he stated that RB zoning is too broad in scope, allowing by right, a number of commercial-type uses including one that is clearly retail: antique shops; Part B of RB permitted uses includes a blanket sales category subject only to lot requirements; he stated that Part B requires a Special Exception Permit and a public hearing, but once RB is granted he is afraid

that demands for Special Exceptions will be hard to resist; he further stated that using RB zoning to legalize placing a professional office in a building that is clearly appropriate also for use as a residence, and could revert to residential use in the future, is like using a sledgehammer to crack a peanut; he stated that he is concerned about the broadness and bluntness of the RB category; he further stated that unfortunately RB is the only category that can accommodate the uses because the City's current zoning ordinance is not fine-tuned enough to address the request before Council; he stated that he can remember four cases within his neighborhood or near neighborhood where people want offices within residences; he further stated that a recent development, Item 3 on the agenda to be heard at this meeting, involves proposed changes in RB that accentuate his concerns; specifically the office type use: medical offices/clinics is proposed to move from Part B, which requires a public hearing, to Part A where it is granted by-right; in addition, the changes would newly add the category outpatient, mental health, and substance abuse clinic to Part B of RB; Dr. Munley stated that he hopes the City will sharpen and narrow zoning categories dealing with residences so that people wanting offices in residential-type buildings won't have to rely on the RB "blunder bus"; he feels that instant gratification cannot be demanded, but with some effort and care on the part of the Planning Department, an appropriate zoning code revision to accommodate requests like Mr. Padgett's, should be doable in short order to accommodate their needs; he further stated that he does not see the need to rezone the other two properties listed in the rezoning request; he stated that it does not make sense to make uniform block zoning an end in itself, especially after the rezoning (should it go through), anyone looking at the 500 block of the Boulevard will see exactly what they see now: a medical office in the midst of residential-type building; he stated that if it looks like spot zoning, and squawks like spot zoning, it's spot zoning no matter how many cosmetic/technical changes on paper happen; Dr. Munley stated that the block he lives in consists of four properties, one of which (the Dental Associates building) is already zoned RB while the three remaining properties are Residential Single-Family; he stated that he would not appreciate it if he and his neighbors were approached by the City and encouraged to rezone to RB; he further stated that City encouragement of rezoning raises an additional, perhaps more serious, concern—if the city encourages rezoning or up-zoning, how independently can Council judge the matter unless Council is also behind the encouragement effort; he stated that he does not mean to imply that Council does not have its independence; Dr. Munley stated that in Salem's Comprehensive Plan the Sprinkle & Ayyildiz property is properly shown as commercial (red); he further stated that in 2003 he was insured that the Boulevard would not be assaulted with additional up-zoning and it would retain the residential character of the area; he asked that Council respect the assurance he was given in 2003; and

WHEREAS, G. Sprinkle, property owner – 501, 511 Boulevard-Roanoke, appeared before the Council and stated that if there was a fire tonight at 511 Boulevard he would not be able to rebuild his office and practice dentistry at the current location on Boulevard; he stated that he purchased the property located at 501 Boulevard at an auction in 1998; he stated that the property was purchased so that people coming to and living around his dental practice would not have to look at a “bunch of junk”; he stated that major improvements have been made to the property; he further stated that initially the property was rented out to families for the first few years, but it became unsuccessful; he stated that the property is now rented to college students; he stated that even though renting the property to college students has been successful, he would like to be able to rent the property to a law or an accounting firm rather than to college students; he asked that Council to approve the rezoning request; and

WHEREAS, Mr. Padgett reappeared before Council and stated that even though the property owners are listed as Sprinkle and Ayyildiz for the properties at 511 Boulevard and the 500 block Boulevard, the property is actually owned by Sprinkle and Sprinkle; due to an oversight, the deed had not been recorded to show the change prior to the request being submitted; he stated that the proper paperwork has been recorded and the property is now shown to be owned by Sprinkle and Sprinkle; he wanted that noted for the record; and

WHEREAS, Gene Grubitz, Academy Street, Salem (daughter of resident at 432 Boulevard), appeared before the Council to read a statement from her mother; she stated that her mother lives across the street from Mr. Sprinkle’s rental property; she read the following statement: “I am Pauline Spangler. I live at 432 Boulevard, directly across from the properties that are being proposed for rezoning to residential business. I received a notice about this rezoning. My husband and I purchased the house on the Boulevard in the mid-1970s”; Ms. Grubitz stated that her mother has lived there since the 1980s; she further stated that her mother feels that the upkeep of the homes located on the Boulevard has improved since she purchased the property in the 1970s; she stated that her mother enjoys living on the Boulevard and does not want the neighborhood to change, becoming more commercial; she stated that her mother is concerned about the additional traffic, parking, noise, etc. that would affect the neighborhood if the block rezoning is approved; she further stated that her mother does not understand why five properties need to be rezoned and feels that if the properties are rezoned, it would change a more residential neighborhood into a business area; and

WHEREAS, Bill Wallace, 349 Pennsylvania Avenue, appeared before the Council and stated that he feels that a business should not be run out of

residential property; he stated that by allowing businesses to be operated out of residential property, it devalues properties in the downtown area; he stated that properties cannot continue to “slice and dice everything up” because someone decided to operate a business out of residential property; he stated that Salem needs to decide what it’s going to do downtown and how to maintain downtown in the new environment of “everybody’s gotta be green—let’s walk, drive electric cars”; he stated that residents who live close to downtown and can see a business from their residence, are not trying to have a business out of their home; he further stated that when Salem’s Comprehensive Plan was updated, it was decided that the Boulevard would remain mostly residential and it should remain that way; he requested that Council deny the rezoning request; and

WHEREAS, Dave Foster, 342 High Street, appeared before the Council and stated that he supports Mr. Padgett’s rezoning request; he stated that he and his wife live downtown and walk a lot; he stated that he agrees with Mr. Wallace and feels that since this is a public hearing other issues beyond Mr. Padgett’s law office need to be visited; he stated that he feels that it is important to maintain the integrity of the residential areas in the city; he further stated that as he walks around, he sees examples of inappropriate in-fill where something totally wrong has been allowed to be located in an area that now makes the whole area less nice than it was before; he stated that a comprehensive plan that designates entire areas to be residential would keep this from happening; he stated that he does not think the Pennsylvania Avenue side of the Boulevard needs to be zoned for business; he does not think that business belongs on the Pennsylvania side of the Boulevard, even though two medical offices are currently located on the Boulevard; he further stated that there is a lot of room to try to make better decisions in the future and hopes that Council will do that in the future; and

WHEREAS, Stella Reinhard, 213 North Broad Street, appeared before the Council and stated that she and her family are glad to be back in Salem; she stated that she has lived in Richmond the last few years, and there is more pressure for development in Richmond than in Salem; she discussed the “block” rezoning that occurred on Union Street and now a “block” rezoning is proposed on the Boulevard; she stated that even though she does not live near the Boulevard, she feels that the Boulevard belongs to every resident of Salem; she stated that it is a beautiful connecting avenue; she further stated that the Boulevard has remained stable since she first moved to Salem in 1994; she has sympathy for Mr. Padgett and Dr. Sprinkle, but she has concerns about rezoning a block on the Boulevard; she further stated that the majority of the properties on the Boulevard and the surrounding properties are zoned residential; she further stated that Salem is still a “walkable” community; there is a lot of pressure for development and questioned if Council would want this rezoning if

the property was located next to their property; she stated that she has listened to a lot of city planners from Richmond and in the Roanoke Valley and everyone has said that communities across our nation are making a mistake of too broadly rezoning their communities; she further stated that people are wanting to move to Salem and if a block in the middle of a residential neighborhood is rezoned to allow businesses, she feels people will not want to live in Salem; and

WHEREAS, Debbie Padgett, 521 Boulevard, appeared before the Council and stated that it bothers her that the Boulevard is portrayed as a neighborhood when she feels that it is not really a residential neighborhood; she has lived on the Boulevard for 30 years and people drive and walk down the road, they trash the road, create noise, etc.; she stated that people use the Boulevard as a cut-through to get to other parts of Salem; she stated that she feels that they already live in a RB area because there are houses that are being converted into apartments that are run-down; she stated that the Boulevard is not as beautiful as it used to be; she further stated that she and her husband have done a lot of work to their house and have taken pride in their home, raised their children there, and are not going to change a thing as far as their house goes; our neighborhood/street is not going to change just because they have their office there; she stated that there are houses on the Boulevard and people who come through the Boulevard that do not respect the area; she stated that they live in a business section of town and feels that residential and businesses can coincide with each other; and

WHEREAS, Dave Foster reappeared before the Council to ask Council to explain how G. Sprinkle's dentist practice was rezoned as residential business; he questioned why a dentist medical practice get to be a residential business zoning; he also stated that Dr. Sprinkle and Mr. Padgett have stated that there is a vacant lot located between their properties that they both want to use for parking—he questioned if parking is an approved RB use; he stated that he is confused and would like some clarification; and

WHEREAS, Mayor Foley stated that he feels that Mr. Foster asked valid questions, but the issue being heard at this meeting is the current rezoning request, not what was done 10 years ago; and

WHEREAS, Mr. Foster questioned if the rezoning request is approved, how does it fix Dr. Sprinkle's dental practice; and

WHEREAS, Mayor Foley reiterated that the issue before Council is the rezoning request to rezone five properties to RB; he stated that Council will address things as best it can in the future; he stated that he doesn't know what

happened 10 years ago, all Council can do is its best with what is presented to them; and

WHEREAS, Mr. Foster questioned how a non-residential business can be located in a residential-business zone; he stated that no one lives in Dr. Sprinkle's dental practice; it is not a house, so how is the property eligible to be zoned RB; and

WHEREAS, a discussion was held regarding Mr. Foster's question; and

WHEREAS, the City Manager stated that in the RB zoning district, as a use by special exception, medical offices are a permitted use in the Residential Business District; he stated that it is called residential business zoning, but it does not mean that all the businesses have to have a residential component just as all the residential uses in this district do not have to have a business component; he stated that RB is intended to be a mix of uses, but not both uses in every single building; he further stated if Dr. Sprinkle's property is rezoned to RB, it becomes a conforming use because it is a use allowed within a residential business zoning district; whereas in its existing Residential Single Family District zoning, it is a legal non-conforming use; he stated that currently, if the building were to burn down beyond 50 percent of its value, it could not be rebuilt as a dental office because it is a non-conforming use in Residential Single Family District; and

WHEREAS, Cynthia Jennings, property owner of 529 Boulevard-Roanoke, appeared before the Council in support of the rezoning request; she stated that she intends to keep her property as a single-family residence; she stated that she moved from Roanoke City to Salem six years ago because she likes the character of the neighborhood, which is a mix of business and residential; she further stated that she feels the properties should be rezoned as a group; she stated that if Mr. Padgett's property were to be rezoned, then her property would be located between two properties zoned RB; she further stated that she would prefer that a business that would maintain the property, be located next to her property than some of the rental properties currently located in the neighborhood; she stated that she also feels that if her property is rezoned she would have greater flexibility if she were to decide to sell her property in the future since her property is surrounded by businesses; and

WHEREAS, Cynthia Munley, 425 Boulevard-Roanoke, appeared before the Council and stated that she received a notice of the proposed rezoning as the block of properties proposed to be rezoned are located next to her property on the other side of Walnut Street; she stated that she has two interests in regard

to the rezoning request: first, her home is her main investment and she has put a lot of blood, sweat, and tears into the house so she is concerned about what is going to happen next door to her property; she stated that a lot of things need to be considered; she stated that all five of the properties in the request could make it difficult for her to sell her property as residential in the future; she stated that it is her understanding that the City approached property owners to rezone four of the properties in addition to the initial request from Mr. Padgett; she feels the rationale in the City doing this was to correct the wrong zoning for Dr. Sprinkle's property and to avoid spot zoning on the rest of the block; she stated that from a residential point of view, the extent of commercial properties in the neighborhood appears to be at the upper limit that would still retain the spirit of a walkable, livable residential community as it states in the code; she stated that she supports Dr. Sprinkle's property being rezoned and doesn't mind Mr. Padgett placing an office in his former residence, but she does not want the properties to be rezoned RB; she feels if the five properties are rezoned to RB, it would constitute a major change to the Boulevard and would destabilize the neighborhood with no turning back; she further stated that she does not support the block rezoning request; she feels that if the properties are rezoned, her property would be in the minority and it would start to look like spot zoning for her residential property; she stated that if Council enjoys driving down the Boulevard as it is now, then the rezoning requests should be denied except for Dr. Sprinkle's; she further stated that if the rezoning requests are approved, then in five years when the Boulevard really starts to look different as a direct result of the rezoning, people are going to ask "what happened, when did that happen, how did that happen without knowing about it"; Mrs. Munley stated that the second perspective she has is that of a concerned citizen; she stated that she has been very involved in City planning issues (i.e. she was involved in trying to stop the rezoning of the Elizabeth Campus from 1998 to 2003); she stated that when the Elizabeth Campus was rezoned as the City wanted, she was told that it would be mixed use—now 12 years later, there is not a mixed use on the property except for a corn patch a couple of years ago on Dr. Waldrop's property; she stated that she is still waiting on the running trails and the recreational aspect of the Elizabeth Campus; she further stated that in spite of the rezoning and so many other changes in the City on West Main Street, Apperson Drive, and elsewhere, the Boulevard has remained fairly stable since she moved there in 1986; she stated that two changes on the Boulevard that have affected her quality of life are two properties that are now rented to college students; she stated that the sense that the Boulevard is changing to a more business area is false—it has remained stable other than the student housing, which could be addressed somewhere else in the City Code; she stated that it was called to her attention that Council approved a similar block zoning on Union Street; she stated the block zoning was done on the initiative of the City and she feels that it

is a strange way to approach planning issues in the City; she stated that the neighborhoods need to be protected—Salem is here for the residents; she feels there are other ways to deal with planning neighborhoods than to go and invite adjacent properties to join a rezoning request; she stated that the city’s attempt to avoid spot zoning on the Boulevard will in turn create a new spot zoning problem for the entire Boulevard that will create instability in the neighborhood; will take away the enjoyment of having the Boulevard look the way it does now and will affect the quality of life; she further stated that she approaches the rezoning request from two standpoints: as a resident—her primary investment—she does not want to see that block of properties rezoned, and also as a concerned citizen; she stated that she was involved in the City’s Comprehensive Plan in 2003 and she was assured that the Boulevard would be protected and would not be “tipped” over to become more commercial; she stated that it is her understanding that once a property is over-zoned, the only way to remedy that is for the entire area to be designated residential in the next comprehensive plan, but if property owners do not request that their property be down-zoned, then the property would remain over-zoned and would be “grandfathered” even though the area was designated as residential; she stated that once the city up-zones something, it cannot go back and down-zone very easily; she stated that Council needs to proceed very carefully because the Boulevard is a quality of life issue, not only for the people who live there, but for the whole city as a connector street and as an entrance to the residential areas on both sides and to the downtown area; and

WHEREAS, Mayor Foley stated that he realizes that Mrs. Munley has concerns, but she has spoken longer than anyone else and there are other people present who would like to speak also; and

WHEREAS, Mrs. Munley stated that she is wrapping up and apologized for taking so much time; she stated that she wanted to develop the ideas that trying to solve one spot zoning could create spot zoning in another area; she stated that as a resident and concerned citizen she opposes rezoning the whole block; she stated that she has a statement from a neighbor who could not be present at this meeting; she read the following statement: “My name is William Metzler. I live at 511 Walnut Street, adjacent to the Munleys. I received a notice from the city about the proposed rezoning. I have a long history with the Boulevard. My father owned all the houses from directly across from the Ingleside apartment building all the way down to the first house on Delaware Street. As a child I can remember the Boulevard when Pete and Thelma Lewis occupied the entire triangular block across from the first house on Delaware, which now looks like a service station and is now a computer store. Mr. Lewis was known internationally for his roses. He was the wealthiest citizen of Salem, other than

Mr. Hester. I remember when you would always bring your out-of-town guests into Salem through the Boulevard—it was so upscale. The way this proposed rezoning affects my property depends on how you go about it. I agree with rezoning Dr. Sprinkle’s office, which has been there for a long time, but I don’t see why the city should rezone all five properties. The city should only do what is necessary. Rezoning all the other properties would be destabilizing. Wait until the zoning code can be rewritten and fine tune the categories, then it would be best just to zone only for an office. That way you can control what happens on that block of the Boulevard. Just rezoning Dr. Sprinkle’s office would not affect my property—the office is already there. Allowing an office for Mr. Padgett would probably not affect my property much, but if it is changed to RB that would make the possibilities wide open. If all five properties are changed to Residential Business, that would seem to signal that the Boulevard is in a transition from residential to business and that would affect my property because I think a lot of the property owners would then want to rezone their residential properties to Residential Business. My little residential property used to be part of the Munleys before they had it. It is very close. If they had to rezone for some reason then I may also need to rezone to retain my property value. I think this could have a real destabilizing effect on the neighborhood and my property is not right on the Boulevard so the city may not agree to rezone my property and that would mean that I would be left in a kind of limbo where I can’t sell it as residential and I can’t get it up-zoned. Considering that, I think the best thing is to do the absolute minimum—rezone Dr. Sprinkle’s office and stop there” and,

WHEREAS, Mrs. Reinhard reappeared before the Council and stated that before she moved from Salem for a few years, she requested to have a business office in her home and she was given that right without rezoning her property; she stated that it seems to her that you can have businesses in homes without rezoning them and questioned if that was correct; and

WHEREAS, the City Attorney stated that businesses are allowed in homes without being rezoned if the business is the type of business where there would be no people coming to the office; in other words, where you would not recognize it as a business; he stated that Mr. Padgett could not rely on that because he would have clients and employees coming so he would not be able to have his office at his residence without the property being rezoned; and

WHEREAS, Mrs. Reinhard stated that Mr. Padgett was allowed to have his business in his residence when he first moved to the property; and

WHEREAS, the City Attorney stated that Mr. Padgett was allowed to operate his business from his home under the existing zoning at the time he moved to the property; and

WHEREAS, Mrs. Reinhard stated that it seems as though a few more types of zoning are needed; and

WHEREAS, Mr. Padgett reappeared before the Council and stated that he has seen the character of the Boulevard change; he stated that the Boulevard is a pretty section of the city and he feels that rezoning the properties to RB would not change the beauty of the Boulevard at all; he believes the rezoning would actually enhance the beauty of the Boulevard because as Mrs. Munley stated, the detrimental effect to the community has been where a couple of homes have been used as rental; he further stated that because of the type of housing located on the Boulevard it is very difficult to rent to one or two families; therefore, he ends up renting to Roanoke College students; he stated that he wants to keep his property and keep it nice and beautiful for the benefit of the Boulevard and the City of Salem; he further stated that if his property is not rezoned, he will have to sell the property and he does not feel that he would be able to sell the property as a single-family residence; he stated that he feels that he would have to sell his property to an investor who would divide the home into apartments and it would not look as nice in a few years as it currently does; he further requested that Council approve the rezoning requests; and

WHEREAS, Mayor Foley reiterated that multi-family dwellings are allowed in Residential Business District and Single Family District zoning; and

WHEREAS, John Miller, 340 Pennsylvania Avenue, appeared before the Council and stated that he takes exception to the statement made regarding that an office could be located in RMF zoning because in the code it says with special exception, which is the same special exception Dr. Sprinkle would need in order to use his property in RB as a medical office/clinic; it allows for general offices and general offices say basically a law office, a medical office, etc.; he stated that with a Special Exception Permit in RMF zoning, the properties could be used the way Mr. Padgett and Dr. Sprinkle would like to use their properties; and

WHEREAS, the City Attorney stated that Mr. Miller is correct; and

WHEREAS, Judy Lawrence, property owner of 533 Boulevard, appeared before the Council and stated that her property is currently zoned RB; she stated that she used to have a craft shop on the property, which was retail, and she did not have any problems or complaints from the neighbors; she stated that she

has lived on her property for over 30 years and she commended the petitioners on the improvements they have made to their properties and to the area; she stated that she does not think it would be detrimental to the neighborhood for the properties to be rezoned; and

WHEREAS, the City Attorney noted that each individual parcel in the request requires a separate motion; and

WHEREAS, Councilwoman Garst questioned if a parking lot is allowed in RB zoning; and

WHEREAS, the City Manager stated that a parking lot, as long as it is an accessory use to an existing business, is allowed in an RB zoning district; and

WHEREAS, the City Attorney stated that a “blanket” parking lot that you might see in downtown Roanoke is not allowed in RB zoning; and

WHEREAS, Councilwoman Johnson stated that she has rental property on Academy Street and knows that it is difficult to rent to families, but she refuses to rent to college students; she also owns a business in Salem; she stated that it has been her general observation that since she has been a member of the Planning Commission and Council she has listened to the citizens many times on many related issues; she stated that she also cares about the appearance of the city and the feel of the neighborhoods and the need to maintain them; she stated that as Council members and planners, we are also asked to have a plan and have a vision and to try to keep from spot zoning; she stated that Council is constantly criticized for spot zoning; she stated that she has observed properties turned into rental properties, which have turn into blight situations for the neighbors; she stated that she has also observed older homes that have benefited from being turned into businesses; and

WHEREAS, Councilman Jones concurred with Councilwoman Johnson; he stated that if the rezoning request is approved, he does not think it will affect the trees and landscaping on the Boulevard; he stated that times have changed from seven years ago and the city has to change with the times, unfortunately; and

WHEREAS, Councilwoman Garst stated that it is her observation that the petitioners, the Munleys, and the Lawrences moved into the neighborhood with the intent to improve the neighborhood not just for themselves but for the surrounding properties; she thanked them for their efforts; and

WHEREAS, Mayor Foley stated that there was a rezoning request on Boulevard approximately six months ago that Council denied because it would have been a RB zoning in the middle of a residential zoning; he stated that spot zoning has been done in the past and he would like to not spot zone properties; and

WHEREAS, no other person(s) appeared related to the request;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND SECTION 106-110, ARTICLE I, CHAPTER 106, OF THE CODE OF THE CITY OF SALEM, VIRGINIA, RELATING TO ZONING AND DIVIDING THE CITY INTO BUILDING DISTRICTS AND ESTABLISHING DISTRICT BOUNDARY LINES ON THE ZONING MAP OF THE CITY OF SALEM, VIRGINIA," concerning 521 Boulevard-Roanoke, was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

WHEREAS, a discussion was held regarding when properties can be rezoned, zoning changes, etc.

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND SECTION 106-110, ARTICLE I, CHAPTER 106, OF THE CODE OF THE CITY OF SALEM, VIRGINIA, RELATING TO ZONING AND DIVIDING THE CITY INTO BUILDING DISTRICTS AND ESTABLISHING DISTRICT BOUNDARY LINES ON THE ZONING MAP OF THE CITY OF SALEM, VIRGINIA," concerning 501 Boulevard-Roanoke, was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND SECTION 106-110, ARTICLE I, CHAPTER 106, OF THE CODE OF THE CITY OF SALEM, VIRGINIA, RELATING TO ZONING AND DIVIDING THE CITY INTO BUILDING DISTRICTS AND ESTABLISHING DISTRICT BOUNDARY LINES ON THE ZONING MAP OF THE CITY OF SALEM, VIRGINIA," concerning 511 Boulevard-Roanoke, was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND SECTION 106-110, ARTICLE I, CHAPTER 106, OF THE CODE OF THE CITY OF SALEM, VIRGINIA, RELATING TO ZONING AND DIVIDING THE CITY INTO BUILDING DISTRICTS AND ESTABLISHING DISTRICT BOUNDARY LINES ON THE ZONING MAP OF THE CITY OF SALEM, VIRGINIA," concerning 500 block (vacant lot) Boulevard-Roanoke, was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN GARST, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND SECTION 106-110, ARTICLE I, CHAPTER 106, OF THE CODE OF THE CITY OF SALEM, VIRGINIA, RELATING TO ZONING AND DIVIDING THE CITY INTO BUILDING DISTRICTS AND ESTABLISHING DISTRICT BOUNDARY LINES ON THE ZONING MAP OF THE CITY OF SALEM, VIRGINIA," concerning 529 Boulevard-Roanoke, was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Councilman Jones asked that city officials: the City Manager, Assistant City Manager, and Planning address RB zoning, specifically how to narrow the RB zoning; this examination should take place within the next 90 days with findings to be presented to Council; and

WHEREAS, Councilwomen Garst and Johnson concurred with Councilman Jones' request; and

WHEREAS, Mayor Foley questioned if 90 days was sufficient time for staff to complete the request; and

WHEREAS, the City Manager stated that 90 days would be adequate for review by staff and the Planning Commission to form a recommendation to bring back to Council.

Mayor Foley stated that the meeting would reconvene after a brief break (meeting returned to session at 9:16 p.m.).

Mayor Foley reported that this date and time had been set to hold a public hearing and to consider an ordinance on first reading rezoning the

ITEM 2
ORDINANCE
PASSED WITH
PROFFERED
CONDITION
REZONING THE
PROPERTIES
LOCATED AT 1002
AND 1108
NEWMAN DRIVE
FROM RSF TO LM;
SPECIAL
EXCEPTION
PERMIT
APPROVED TO
ALLOW THE
CONSTRUCTION
OF A NEW AM
RADIO TOWER

property of Mel Wheeler Inc., property owner, for rezoning the properties located at 1002 and 1108 Newman Drive (Tax Map #'s 58-1-1 and 58-1-2) from RSF Residential Single Family District to LM Light Manufacturing District; and also consider the issuance of a Special Exception Permit to allow the construction of a new AM radio tower with proffered condition; notice of such public hearing was advertised in the August 4 and 11, 2010, issues of The Roanoke Times, a newspaper having general circulation in the City of Salem; and

WHEREAS, the Planning Commission at its regular meeting held August 11, 2010, recommended approval; and

WHEREAS, staff noted the following: the subject properties consist of two parcels located at the intersection of Newman Drive and Doyle Street; the property is approximately 40 acres and is mostly vacant except for the radio station facilities and the five existing towers; this request is to rezone these properties to bring the zoning into compliance with the land use; towers are not a permitted use in RSF, and the existing ones on site are grandfathered; the request for a Special Exception Permit would allow for the construction of a sixth tower on the site, near the Gish Branch Creek, to the west of the existing towers; it would also allow for the relocation of existing Tower # 5 slightly to the southeast; this realignment will improve the signal of the antenna array; the petitioner has proffered the following: permitted uses for the subject property shall be limited to broadcast towers; office uses/structures associated with the use and/or operation of the broadcast towers; accessory uses/structures associated with the use and/or operation of the broadcast towers; and general and professional office uses shall be permitted in the existing structure; the proposed new antenna is located within the 100 year flood zone for Gish Branch; and the applicant has provided "Determination of No Hazard to Air Navigation" letters from the FAA; and

WHEREAS, Ben Crewe with Balzer and Associates, representing the petitioner, appeared before the Council to explain the request; Mr. Crew stated Sean Horne with Balzer and Associates, Leonard Wheeler and Josh Arritt with Mel Wheeler, Inc., are also present at the meeting; he stated that the existing AM radio towers have been on the property as a grandfathered use under Residential Single Family District zoning and the petitioner is requesting the property be rezoned to Light Manufacturing District to bring the site into conformance with the current zoning ordinance; he stated that the petitioner is also requesting a Special Exception Permit for the use of an AM radio tower; he stated that there was a lot of discussion at the Planning Commission meeting regarding the actual rezoning to Light Manufacturing District; he stated that the petitioner does not intend to use the property as a manufacturing site, which is

why the property owner proffered the condition that the property would be used for the AM tower use and accessories associated with the tower, and for general offices in the existing structure on the property; he stated that the new tower will be similar to the existing towers on the property—it will be lit the same; it will be the same height and same markings; he stated that it will be a lattice-type tower; he further stated that Mel Wheeler, Inc., had done its homework with the FAA and FCC, and have received both a no hazard to air navigation and a no significant environmental impact with the construction of the new tower; and

WHEREAS, the City Manager asked that Mr. Crewe explain the proffered condition; and

WHEREAS, Mr. Crewe stated that the proffered condition is that the permitted uses for the subject property shall be limited to towers, office uses/structures associated with the use and/or operation of the towers; and accessory uses/structures associated with the use and/or operation of the towers; and general and professional offices shall be permitted in the existing structure; and

WHEREAS, Reverend Joseph Roudebush, 1124 Newman Drive, appeared before the Council and stated that his property is right beside the radio station property; he stated that after much explanation two weeks ago and much clarification, a question was brought up about the possibility of instead of residential single family to light manufacturing zoning, if there was something that could be offered that would be a lower zoning category; he also thanked the petitioners for speaking and clarifying things with him; he stated that he is a new resident to Salem and he initially had some concerns about the property being rezoned to light manufacturing, but after much discussion and with the proffered condition, his concerns have been alleviated; he questioned if there was a lesser zoning that could be used for this property; and

WHEREAS, the City Attorney stated that towers can be permitted by Special Exception Permits not only in Light Manufacturing, but also in Heavy Manufacturing, Business Commerce District, and Highway Business District; and

WHEREAS, Light Manufacturing is the lesser of the zoning; and

WHEREAS, the City Manager stated that LM is the lowest zoning district towers are allowed, and the property is located adjacent to property currently zoned LM; he stated that he does not think one of the other zoning classifications would improve the situation with the proffered condition; he

further stated that one of the lesser options would open up the property to other things that would generate more traffic; he stated that the proffered condition protects the neighborhood; and

WHEREAS, Leonard Wheeler, President and General Manager of Mel Wheeler, Inc., appeared before the Council to further address Reverend Roudebush's question; he stated that it is the intent to continue in the broadcast business and to continue to use the property as it has been used; he further stated that one of the things brought up in the planning meeting was as the zoning and the comprehensive plan is updated, could a category that addresses broadcasting be defined in the code; and

WHEREAS, Mayor Foley stated that the reason for the rezoning request is that the petitioners want to place a new tower on the property and want to move a tower; he stated that the property is grandfathered to allow the radio towers that currently exist on the property; and

WHEREAS, Stella Reinhard, 213 Broad Street, appeared before the Council and questioned if the proffered condition will remain with the property if the property is sold; and

WHEREAS, the City Attorney stated that if the property was sold and the new property owners wanted to place a business that was allowed in Light Manufacturing District zoning, they would have to file a petition and go before the Planning Commission and City Council to rezone or change the condition; and

WHEREAS, the City Manager stated that proffered condition(s) go with the property, not the property owner, and does not change unless Council takes another action through a public hearing just like a rezoning; and

WHEREAS, Mayor Foley stated that he thought the new tower was going to be taller than the existing towers; and

WHEREAS, Mr. Crewe stated that the new tower will be the exact same height; he stated the existing towers are 388 feet and the new tower will be the same height; and

WHEREAS, no other person(s) appeared related to the request;

ON MOTION MADE BY COUNCILWOMAN GARST, SECONDED BY COUNCILMAN JONES, AND DULY CARRIED, an ordinance entitled, "AN

ORDINANCE TO AMEND SECTION 106-110, ARTICLE I, CHAPTER 106, OF THE CODE OF THE CITY OF SALEM, VIRGINIA, RELATING TO ZONING AND DIVIDING THE CITY INTO BUILDING DISTRICTS AND ESTABLISHING DISTRICT BOUNDARY LINES ON THE ZONING MAP OF THE CITY OF SALEM, VIRGINIA,” was passed on first reading with a proffered condition and a Special Exception Permit to allow the construction of a new AM radio tower was hereby approved and the proposal as set forth complies with all developmental standards – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley reported that this date and time had been set to hold a public hearing and consider an ordinance on first reading amending Chapter 106, Article II District Regulations, Section 106-208, 106-210.2, 106-212.2, 106-214.2, and 106-216.2; Article III Use and Design Standards, Section 106-308 Office uses; and Article VI Definitions and Use Types, Section 106-602.7 of The Code of the City of Salem, Virginia, pertaining to Office Use Types; notice of such public hearing was advertised in the August 4 and 11, 2010, issues of The Roanoke Times, a newspaper having general circulation in the City of Salem; and

WHEREAS, the Planning Commission at its regular meeting held August 11, 2010, recommended approval; and

WHEREAS, staff noted the following: this request is to amend Chapter 106, Article II, District Regulations, Article III Use and Design Standards, and Article VI Definitions and Use Types related to medical offices/clinics and outpatient mental health and substance abuse clinics; currently, medical offices/clinics of any specialty are required to have a special exception permit; staff has researched definitions for both of these uses, and new definitions are being proposed; with the proposed changes, medical offices/clinics would be permitted by right in RB, DBD, TBD, HBD, and BCD zoning districts, and outpatient mental health and substance abuse clinics would be permitted by special exception in the same zoning designations; and, also proposed are use and design standards for outpatient mental health and substance abuse clinics; and

WHEREAS, the City Manager stated that in the past all medical offices required a Special Exception Permit in order to be placed in the zoning classifications where medical offices are allowed; this was done in an effort to avoid having a methadone clinic or a drug treatment clinic located without Council approval; he stated that in the previous way it was handled, a drug abuse treatment center or a methadone clinic could not be differentiated from a

ITEM 3
ORDINANCE
PASSED ON FIRST
READING
AMENDING
CHAPTER 106,
ARTICLE II DISTRICT
REGULATIONS,
SECTION 106-208,
106-210.2, 106-
212.2, 106-214.2,
and 106-216.2;
ARTICLE III USE AND
DESIGN
STANDARDS,
SECTION 106-308
OFFICE USES; AND
ARTICLE VI
DEFINITIONS AND
USE TYPES,
SECTION 106-602.7
OF THE CODE OF
THE CITY OF
SALEM, VIRGINIA,
PERTAINING TO
OFFICE USE TYPES

dentist, doctor, or a chiropractor's office; he stated that case law has been established to the point to where methadone clinics and other substance abuse treatment centers can be differentiated from chiropractor, dentist and other medical office buildings; he stated that rather than have every doctor, dentist, and chiropractor who wants to locate in Salem go through the Special Exception Permit process, the change would make it a use by right in the appropriate zoning districts while still requiring methadone clinics and drug abuse treatment facilities to go through the Special Exception Permit process in the zoning classification allowed; and

WHEREAS, Councilwoman Garst questioned how veterinary use falls in the category; and

WHEREAS, the City Attorney stated that after reading the definition, a veterinary hospital or clinic is set out totally separate from a medical office and does not require a Special Exception Permit, it is an allowed use by right in certain zoning classifications; and

WHEREAS, Councilwoman Garst questioned under 106-212.2 (a)4 office use types/laboratories; she stated that a facility like Novozymes classifies itself as a laboratory; and

WHEREAS, the City Manager stated that Novozymes is clearly a manufacturing facility and the laboratory is an accessory use to the manufacturing process so it couldn't "sneak in" under the laboratory definition doing the types of things that Novozymes does; if Novozymes had an office where only lab testing was performed and there was no manufacturing going on, then it would be allowed; and

WHEREAS, the Director of Planning and Economic Development stated that definitions for laboratories are in the code, and the definition reads, "these are establishments primarily engaged in performing research or testing activities into technological matters"; so the city would rely on the definition when someone would come before them; she stated that typical uses include engineering and environmental laboratories, medical, optical, dental, and forensics laboratories, x-ray services and pharmaceutical laboratories only involved in research and development; she stated that excluded are any laboratories which mass produce one or more products directly for the consumer market; and

WHEREAS, Councilwoman Garst stated that she is concerned about the laboratory definition; she feels that it is too broad a definition; and

WHEREAS, Mayor Foley asked that staff also look at the laboratory definition in the code; and

WHEREAS, no other person(s) appeared related to the request;

ON MOTION MADE BY COUNCILWOMAN JOHNSON, SECONDED BY COUNCILWOMAN GARST, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND, REVISE, AND REORDAIN CHAPTER 106, ARTICLE II DISTRICT REGULATIONS, SECTION 106-208, 106-210.2, 106-212.2, 106-214.2, and 106-216.2; ARTICLE III USE AND DESIGN STANDARDS, SECTION 106-308 OFFICE USES; AND ARTICLE VI DEFINITIONS AND USE TYPES, SECTION 106-602.7 OF THE CODE OF THE CITY OF SALEM, VIRGINIA, PERTAINING TO OFFICE USE TYPES" was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley reported that this date and time had been set to hold a public hearing and consider adopting Resolution 1166 authorizing public improvement bonds; notice of public hearing was published in the August 5 and 19, 2010, issues of the Salem Times Register, a newspaper published and having general circulation in the City of Salem; and

<p>ITEM 4 RESOLUTION 1166 ADOPTED AUTHORIZING PUBLIC IMPROVEMENT BONDS</p>

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, reported that the City received a commitment from the Virginia Resource Authority (VRA) to provide financing to the City as it moves forward with sewer repair/replacement under the Consent Order with DEQ; in order to finance the costs, Council must approve an issuance of \$4,500,000 in Public Improvement Bonds; after review, it is the recommendation of the Committee that Council adopt Resolution 1166 and approve the ordinance authorizing the issuance of \$4,500,000 in Public Improvement Bonds; and

WHEREAS, the Director of Finance stated that this is a public hearing; and

WHEREAS, Mayor Foley requested that the Director of Finance further explain the Consent Order with DEQ; and

WHEREAS, the Director of Finance stated that the City has agreed to improve and rehabilitate a number of sewer lines throughout the City; the City obtained approval from DEQ on the plan submitted; the Virginia Resource Authority is willing to loan the City the funds for the improvements over a 20-year period; he stated that the purpose of the resolution and ordinance is to

move forward with the project; he stated that a few months ago the projects were bid out and contracts were awarded by Council; he stated that this is the finance part of the project and needs to be completed so that the projects can be completed in a timely manner; he stated that Resolution 1066 is a resolution adopting the form of the borrowing and is longer than the ordinance because it has all the details of the bonds and information that goes with it; he stated that the ordinance itself is Council's authorization to borrow the funds as general obligation bonds on behalf of the City and issue debt; and

WHEREAS, no other person(s) appeared related to this request;

ON MOTION MADE BY COUNCILWOMAN JOHNSON, SECONDED BY COUNCILWOMAN GARST, AND DULY CARRIED, Resolution 1166 authorizing public improvement bonds was hereby adopted:

(HERE SET OUT RESOLUTION 1166)

– the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ITEM 5
ORDINANCE
PASSED
AUTHORIZING
ISSUANCE OF
\$4,500,000 OF
PUBLIC
IMPROVEMENT
BONDS

Mayor Foley requested that Council consider an ordinance on first reading authorizing the issuance of \$4,500,000 of Public Improvement Bonds; and

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, stated that the proposed ordinance is the authorization of the issuance of the bonds for the improvements of the sewer system in Salem through Resolution 1166;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, an ordinance entitled, "ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION PUBLIC IMPROVEMENT BONDS OF THE CITY OF SALEM, VIRGINIA, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,500,000" was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ITEM 6
RESOLUTION 1167
ADOPTED
AMENDING THE
CITY OF SALEM'S
SECTION 125
CAFETERIA PLAN

Mayor Foley requested that Council consider adopting Resolution 1167 amending the City of Salem's Section 125 Cafeteria Plan; and

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, reported that the City offers to its employees a Flexible Benefits Program as authorized by Section 125 Cafeteria Plan of the Internal Revenue Code; due to changes in federal law, it is necessary to amend the City Flex Plan in order to comply with these regulations; after review, the Committee recommends that Council adopt Resolution 1167 amending the City Flex Plan; and

WHEREAS, the Director of Finance stated that the recently adopted federal health legislation has put into place a variety of health-related issues that will be implemented as early as September 30, 2010, and going out to 2018; he stated that Resolution 1167 amends the City's plan to be in compliance with federal regulations that will take place through 2012; he further stated that the two biggest changes are that children up to the age of 26 being eligible to continue on their parents plan, and the other change is that over-the-counter medications, which in prior years have been eligible to be included in an employee's allocation of their flex plan, no longer will be unless accompanied by a physician's prescription;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, Resolution 1167 amending the City of Salem's Section 125 Cafeteria Plan was hereby adopted:

(HERE SET OUT RESOLUTION 1167)

– the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley requested that Council consider authorizing a transfer of funds between/among the various Enterprise Funds; and

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, reported that according to the first year end run for the Enterprise Fund, the Water/Sewer and Civic Center funds have ended the year with negative balances; to prevent any impact on taxpayers and utility customers, these accounts must be returned to a more positive footing; the Electric fund has adequate cash resources that would allow a transfer of funds with minimal effect; after review, the Committee recommends Council to authorize a one-time transfer of funds from the Electric fund to the Water/Sewer and Civic Center funds;

<p>ITEM 7 TRANSFER OF FUNDS BETWEEN/ AMONG THE VARIOUS ENTERPRISE FUNDS APPROVED</p>

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, Council hereby authorizes a transfer of funds between/among the various Enterprise Funds – the roll call vote: List D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ITEM 18
RESOLUTION 1168
ADOPTED
AMENDING
ELECTRIC UTILITY
RATES

Mayor Foley requested that Council consider authorizing a transfer of funds between/among the various Enterprise Funds; and

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, reported that there is potential for electric utility customers, who own and operate an eligible renewable energy generator, to request to be connected to the City system; currently the City's Book of Rates does not have a schedule relating to such a request; after review, the Committee recommends adopting Resolution 1168 amending the City's Book of Rates by adding Class 90 or Schedule N.M. (net metering rider) to provide a means of handling such requests; and

WHEREAS, the Director of Finance stated that renewable energy is the "green buzz word" right now; he stated that people who have the ability or the resources to generate energy for consumption in their home (i.e. placing solar panels on their roofs to generate electricity, or windmills, etc.); he stated that sometimes people who do these things can generate far more power than they need for their personal consumption; as a result, they are ultimately giving the electric system additional power, which the city is required to take from them; he stated that Resolution 1168 establishes a procedure and a protocol if this situation should arise; he stated that he knows of at least one case this may happen; and

WHEREAS, Councilwoman Garst questioned if this is a buy-back; and

WHEREAS, the City Manager stated that it is a buy-back; he stated that if a customer generates more power over a billing cycle than what they use from the city, then the city will be paying the customer for the power being put back into the system;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, Resolution 1168 amending electric utility rates was hereby adopted:

(HERE SET OUT RESOLUTION 1168)

– the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley requested that Council consider approval of the Blue Ridge Behavioral Healthcare's proposed fiscal year 2011 Performance Contract with the Virginia Department of Behavioral Health and Developmental Services; and

WHEREAS, Councilman Jones, Vice Chairman of Council's Audit-Finance Committee, reported that the City of Salem participates with Blue Ridge Behavioral Healthcare in providing mental health/mental retardation and substance abuse services to its citizens; each year, BRBH enters into a "Performance Contract" with the Commonwealth of Virginia Department of Medical Assistance/Department of Mental Health/Mental Retardation for providing these services; after review, the Committee recommends that the Performance Contract be approved as written;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, the Blue Ridge Behavioral Healthcare's proposed fiscal year 2011 Performance Contract with the Virginia Department of Behavioral Health and Developmental Services was hereby approved – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ITEM 9
BLUE RIDGE
BEHAVIORAL
HEALTHCARE'S
PROPOSED FISCAL
YEAR 2011
PERFORMANCE
CONTRACT WITH
THE VIRGINIA
DEPARTMENT OF
BEHAVIORAL
HEALTH AND
DEVELOPMENTAL
SERVICES
APPROVED

Mayor Foley requested that Council consider an ordinance on first reading amending Part II, Chapter 1, of The Code of the City of Salem, Virginia, by enacting Section 1-14, pertaining to Fee for Inmate Processing; and

WHEREAS, the City Manager stated that this is a fee allowed by the State Code allowing local governments who participate in regional jail facilities to charge a \$25 processing fee for inmates who are booked into a regional jail; by adopting the ordinance, it allows the city to begin collecting the fee from inmates who are processed by the City's police and sheriff's departments, beginning October 1, 2010; and

WHEREAS, the City Attorney stated that the State Code has allowed localities to charge this fee for many years; he stated that Roanoke County has been charging the fee for a number of years;

ITEM 10
ORDINANCE
PASSED
AMENDING PART
II, CHAPTER 1 OF
THE CODE OF THE
CITY OF SALEM,
VIRGINIA, BY
ENACTING
SECTION 1-14
PERTAINING TO
FEE FOR INMATE
PROCESSING

ON MOTION MADE BY COUNCILWOMAN JOHNSON, SECONDED BY COUNCILMAN JONES, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND, REVISE, AND REORDAIN, PART II, CHAPTER 1, OF THE CODE OF THE CITY OF SALEM, VIRGINIA, BY ENACTING SECTION 1-14, PERTAINING TO FEE FOR INMATE PROCESSING," was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

ITEM 11
ORDINANCE
PASSED
AMENDING PART
II, CHAPTER 86,
ARTICLE IV OF THE
CODE OF THE CITY
OF SALEM,
VIRGINIA, BY
ENACTING
SECTION 86-97,
PERTAINING TO
REIMBURSEMENT
OF EXPENSES
INCURRED IN
RESPONDING TO
CERTAIN TRAFFIC
INCIDENTS

Mayor Foley requested that Council consider an ordinance on first reading amending Part II, Chapter 86, Article IV of The Code of the City of Salem, Virginia, by enacting Section 86-97, pertaining to Reimbursement of Expenses Incurred in Responding to Certain Traffic Incidents; and

WHEREAS, the City Manger stated that this is also a provision of the State Code that allows the City to recoup costs should emergency responders go to the scene of an accident where a driving under the influence charge is ultimately found to be the cause of the accident; he stated that the city can seek a flat-rate reimbursement for emergency medical and fire services of \$350 or the city can itemize the expenses and be reimbursed up to \$1,000 for expenses caused by an impaired driver; and

WHEREAS, Mayor Foley questioned if it is the responsibility of the Commonwealth Attorney's office to impose the fee; and

WHEREAS, the City Attorney stated that there are two ways the fees can be imposed; one is in the course of the conviction of DUI, reckless driving, etc., the judge issuing the punishment can add the fee to the requirement; he stated that the other way the fee can be imposed is for the city to file a civil suit against the accused; he further stated that the easiest and most cost-effective way would be for the Commonwealth Attorney to request the judge order the fee to be paid at the time of the criminal conviction, which is the process the City would use;

ON MOTION MADE BY COUNCILMAN JONES, SECONDED BY COUNCILWOMAN GARST, AND DULY CARRIED, an ordinance entitled, "AN ORDINANCE TO AMEND, REVISE, AND REORDAIN, PART II, CHAPTER 86, ARTICLE IV, DIVISION 1 OF THE CODE OF THE CITY OF SALEM, VIRGINIA, BY ENACTING SECTION 86-97, PERTAINING TO REIMBURSEMENT OF EXPENSES INCURRED IN RESPONDING TO CERTAIN TRAFFIC INCIDENTS," was hereby passed on first reading – the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley requested that Council consider appointments to fill vacancies on various boards and commissions;

ITEM 12
NO ACTION TAKEN

THEREUPON, no action was taken.

Mayor Foley requested that Council consider an ordinance on second reading establishing the policies and procedures for granting a cable television franchise agreement; the ordinance was passed on first reading at Council's August 9, 2010, meeting; and

ITEM 13
ORDINANCE
ADOPTED
ESTABLISHING THE
POLICIES AND
PROCEDURES FOR
GRANTING A
CABLE TELEVISION
FRANCHISE
AGREEMENT

WHEREAS, Mayor Foley reiterated that this ordinance does not establish the cable provider for the city, it establishes the guidelines for the franchise agreement;

ON MOTION MADE BY COUNCILWOMAN JOHNSON, SECONDED BY COUNCILWOMAN GARST, AND DULY CARRIED, an ordinance establishing the policies and procedures for granting a cable television franchise agreement was hereby adopted on second reading:

(HERE SET OUT ORDINANCE)

– the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

Mayor Foley requested that Council consider adopting Resolution 1169 in support of Lewis-Gale Medical Center's application to introduce Neonatal Special Care; and

ITEM S1
RESOLUTION 1169
ADOPTED IN
SUPPORT OF
LEWIS-GALE
MEDICAL CENTER'S
APPLICATION TO
INTRODUCE
NEONATAL
SPECIAL CARE

WHEREAS, the City Manager stated that as Council is aware, Lewis-Gale Medical Center has recently begun a push to increase its obstetrics practice at the hospital; he stated that as a result, the number of births have increased at Lewis-Gale Medical Center; he further stated that as the number of births have increased, the need for in some cases, special care when there is a problem during the child birthing process or with the child after its birth; he stated that currently Lewis-Gale Medical Center does not have the facilities to care for the special need newborns; he stated that because of the increase birth rate and the desire to keep mothers with their children, Lewis-Gale Medical Center is requesting through the process with the State of Virginia permission to add Neonatal Intensive Care Units to Lewis-Gale Hospital; he stated that Resolution 1169 expresses the City of Salem's support of the expanded service at Lewis-Gale

Medical Center; and

WHEREAS, Councilwoman Garst stated that not only would this be a benefit to the citizens of Salem, but also for neighbors in the outlining areas; she stated that she remembers Mr. Giovanetti with Lewis-Gale stating that approximately 70 percent of the patients come from outside of the area;

ON MOTION MADE BY COUNCILWOMAN GARST, SECONDED BY COUNCILWOMAN JOHNSON, AND DULY CARRIED, Resolution 1169 in support of Lewis-Gale Medical Center's application to introduce Neonatal Special Care was hereby adopted:

(HERE SET OUT RESOLUTION 1169)

– the roll call vote: Lisa D. Garst – aye, William D. Jones – aye, Jane W. Johnson – aye, John C. Givens – absent, and Byron Randolph Foley – aye.

There being no further business to come before the Council, the same on motion adjourned at 9:50 p.m.